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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,313	10/23/2003	Steven P. Webb	ADVA:020	8566

7590 11/23/2004
O'KEEFE, EGAN & PETERMAN, L.L.P.
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Austin, TX 78746

EXAMINER

YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,313

Applicant(s)

WEBB ET AL.

Examiner

Sam Chuan C. Yao

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10-12-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I (claims 1-17) in the reply filed on 09-27-04 is acknowledged. Note: product claims 28-29 are still pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 6, and 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over an overview publication on elastic non-wovens made by Jared Austin dated 10-24-01 (hereinafter simply referred to as Austin1) in view of Austin (US 6,225,243).

With respect to claims 1 and 16, Austin1 discloses a process of making a bi-component elastic melt-spun non-woven fabric, the process comprises forming a bonded non-woven web from sheath/core bi-component filaments, wherein the filaments comprises an elastomeric core and an extensible polymeric sheath; and then incrementally stretching the bonded web. Austin1 may possibly differs from these claims in that, it is unclear whether the extensible polymeric sheath is less elastic than the elastomeric core. In any event, it would have been obvious in the art to use an extensible polymeric sheath having an elasticity which is less than an elasticity of an elastomeric core, because Austin '243, drawn to making

an elastic non-woven fabric of a type which is similar to the non-woven taught by Austin1, teaches the desirability of forming the elastic non-woven fabric from sheath/core bi-component filaments, wherein the filaments comprises an elastomeric core and has a greater elasticity than an extensible polymeric sheath component (abstract; claim 1; figures 1-3).

It is worth-noting that, Austin1 (in another portion of the publication) teaches an elastic non-woven comprising elastic composite, the composite includes *"elastomer stretched during manufacture"* and *"non-elastic component engineered to move with elastomer"*.

With respect to claims 9-10, see column 8 lines 58-65 of the Austin '243 patent.

With respect to claims 11-12, see column 4 line 45 to column 5 line 65 of the Austin '243 patent.

With respect to claims 13-15, Austin1 discloses that the process of making a bi-component elastic melt-spun non-woven fabric *"results in intermittent corrugations that provide microfiber texture"* (emphasis added). Also see figures 26-27 of the Austin1 publication.

With respect to claim 17, see column 4 lines 13-14 and figures 1D-1E of the Austin '243 patent.

4. Claims 3-4 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references set forth in numbered paragraph 3 as applied to claim 1 or 5 above, and further in view of Wu (US 5,422,172).

The references set forth in numbered paragraph 3 are silent on a device which is used to incrementally stretch a non-woven web disclosed by Austin1. However, it would have been obvious in the art to use a pair of intermeshing rollers to incrementally stretch a non-woven web in a process taught by Austin1, because it is a common practice in the art to incrementally stretch an elastic sheet comprising a non-woven web and a elastic film using a pair of intermeshing rolls (abstract; figures 1-4). In view of the similarity in the production processes, one in the art can reasonably and logically infer that the resultant prior art article would naturally possess the same properties as those recited in the claim.

Allowable Subject Matter

5. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: although it is known per se to biaxially stretch an elastic nonwoven, there is no motivation in the art to biaxially incrementally stretch an elastic nonwoven web taught by Austin1.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Sisson (US 4,209,563) is cited as a reference of interest showing an incrementally stretch elastic nonwoven web, wherein the web includes relatively

non-elastic filaments and elastomeric filaments (abstract; col. 11 lines 21-29; figure 6).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

Scy
11-19-04